HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT APPEAL No.1745 of 2005

Between:

S.Y. Venkatrami Reddy and another.

… Appellants

AND

The Superintendent Engineer (Operation),
Southern Power Distribution Company of A.P., Ltd.,
Vidyut Bhavan, Kadapa and two others. … Respondents

; JUDGMENT :

Counsel for the appellants : Shri Vedula Venkataramana

Counsel for the respondents: Shri P.R. Balarama Reddy

Dated: 20th June, 2007

Per C.V.NAGARJUNA REDDY, J.

This appeal is filed against order dated 16.08.2005 passed by the learned Single Judge, whereby he dismissed Writ Petition No.3808 of 2004 filed by the appellants for quashing Memo No.SE/O/KDP/ ADM/S1/F66/D.No.458/2004, dated 26.2.2004 issued by Superintending Engineer, Operation Circle, Andhra Pradesh Southern Power Distribution Company Ltd. (respondent No.1 herein) in the matter of fixation of their seniority and appointment as Lower Division Clerks (LDCs).

Appellant No.1 was appointed as a Bill Collector in the erstwhile Andhra Pradesh State Electricity Board (for short 'the Board') on 11.03.1974 and appellant No.2 was appointed in the same capacity on 14.08.1974. At the time of appointment, appellant No.1 was a graduate. He acquired this qualification in 1977. In 1991, the appellants made representations to the Board for their appointment as LDCs by transfer. The competent authority of the Board accepted their claim and issued an order dated 5.6.1991 for their retrospective appointment as LDCs with effect from 11.07.1974 and 30.04.1977 respectively. However, by proceedings dated 03.12.1991, the appellants' promotions were cancelled. They filed Writ Petition No.15533 of 1991 in this Court. The same was allowed on 25.07.1994 on the ground that before cancelling their appointment as LDCs, the concerned authority did not give the appellants opportunity of hearing. At the same time, liberty was given to the respondents to pass fresh order after complying with the rules of natural justice. Thereafter, the concerned authority passed order dated 9.5.1995 and reiterated the earlier decision for cancellation of the appointment of the appellants as

LDCs. That order was questioned by the appellants by filing Writ Petition No.10269 of 1995. By an order dated 27.7.1998, the learned Single Judge disposed of the writ petition by giving liberty to the appellants to file an appeal to the Board within four weeks from the date of receipt of the order and the Board was directed to consider the said appeal after giving opportunity of personal hearing to the appellants. At the same time, the respondents were restrained from continuing the recovery proceedings till the disposal of the appeal by the Board.

The appellants then filed appeal, which was allowed by the Board vide order dated 9.11.1999 and the appellants' appointment as LDCs by transfer was restored.

Notwithstanding the direction given by the Board, respondent No.1 did not take consequential action. This necessitated filing of Writ Petition No.13982 of 2000 by the appellants, wherein they prayed for issue of a direction to respondent No.1 to take necessary action in terms of order dated 9.11.1999 of the Board. That petition was disposed of by the learned Single Judge on 31.10.2000 and the respondents were directed to finalise the seniority list within a period of three months from the date of receipt of the order after hearing the objections from the aggrieved parties. In compliance of the said order, respondent No.1 completed the exercise of finalising the seniority and issued Memo No.SE/O/CDP/Admn/S1/F.66/D.No.734/2001, dated 21.3.2001, wherein the appellants were assigned notional date of appointment by transfer. This was followed by memo dated 27.9.2001 issued by respondent No.1 whereunder the notional date of appointment of the appellants in the cadre of Upper Division Clerks (UDCs) was fixed as 29.12.1993 and 3.5.1995 respectively.

After some time, the appellants filed Writ Petition No.1854 of

2004 with the complaint that they have not been given the benefit of notional fixation of pay in the cadre of UDC, notional declaration of probation in that cadre and special grade post scale on completion of 8 years from the date of their notional appointment in the cadre of UDC. During the pendency of that petition, respondent No.1 issued Memo No.SE/O/KDP/ADM/SI/F66/ D.No.458/04, dated 26.2.2004, wherein he mentioned that the Chief General Manager, HRD, Andhra Pradesh Southern Power Distribution Company Limited, Tirupati vide his Memo No.CGM/HRD/ES/AS-1/PO-I/AI/D.No.392/04, dated 17.2.2004 cancelled Memo dated 21.3.2001 and directed recovery of the excess amount paid to the appellants. The appellants challenged Memo dated 26.2.2004 in Writ Petition No.3808 of 2004.

The learned Single Judge dismissed both the writ petitions by observing that before cancelling Memo dated 21.3.2001, the respondents were not required to comply with the rules of natural justice.

Sri V. Venkata Ramana, learned counsel for the appellants argued that the view taken by the learned Single Judge on the applicability of the rules of natural justice is contrary to the well settled law and, therefore, the order under challenge is liable to be set aside. Learned counsel emphasised that the direction given by the Chief General Manager, HRD, Andhra Pradesh Southern Power Distribution Company Ltd., Tirupati for cancellation of Memo dated 21.3.2001 directly affected the appellants and respondent No.1 committed a serious illegality by issuing the consequential order without giving them action-oriented notice and opportunity of hearing.

Sri P.R. Balaram Reddy supported the order under challenge and argued that the Chief General Manager, HRD, Andhra Pradesh Southern Power Distribution Company Ltd. did not commit any

illegality by ordering cancellation of Memo dated 21.3.2001 because the same was ex facie illegal.

We have given serious thought to the respective submissions. In our opinion, Memo dated 21.3.2001 issued by respondent No.1 for fixation of seniority of the appellants and their appointment as LDCs by transfer with effect from 11.7.1974 and 30.4.1977 respectively did create a valuable right in their favour and the same could not have been withdrawn without giving them notice to show cause against the action proposed to be taken. Undisputedly, the appellants were appointed as LDCs by transfer in compliance of the direction given by the Board. It is seriously debatable whether the Chief General Manager, HRD, Andhra Pradesh Southern Power Distribution Company Ltd. could review and rescind that order. However, there can be no doubt that such action could not have been taken without hearing the appellants and the contrary view expressed by the learned Single Judge is unsustainable.

The question whether the rules of natural justice are applicable to purely administrative matters is no longer res integra. In **State of Orissa v. Dr. (Miss) Binapani Dei**[1], the Supreme Court considered whether the rules of natural justice are applicable to purely administrative actions and answered the same in affirmative. The propositions laid down in that judgment read as under:

> "1) An order by the State to the prejudice of a person in derogation of his vested rights may be made only in accordance with the basic rules of justice and fairplay. The deciding authority, it is true, is not in the position of a Judge called upon to decide an action between contesting parties, and strict compliance with the forms of judicial procedure may not be insisted upon. He is, however, under a duty to give the person against whom an enquiry is held an opportunity to set up his version or defence and an opportunity to correct or to controvert any evidence in the possession of the authority which is sought to be relied upon to his

prejudice. For that purpose the person against whom an enquiry is held must be informed of the case he is called upon to meet, and the evidence in support thereof. The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional set-up that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would, therefore, arise from the very nature of the function intended to be performed: it need not be shown to be super-added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case.

2) It is true that the order is administrative in character, but even an administrative order which involves civil consequences, as already stated, must be made consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence."

The same rule has been reiterated in **A.K. Kraipak v. Union of India**[2], **Maneka Gandhi v. Union of India**[3], **Swadeshi Cotton Mills Co. Ltd. v. Union of India**[4], **S.L. Kapoor v. Jagmohan**[5] and **Olga Tellis v. Bombay Municipal Corporation**[6].

By applying the ratio of the above noted judgments of the Supreme Court, we hold that Memo dated 26.2.2004 is vitiated due to violation of the rules of natural justice and the learned Single Judge committed an error by refusing to quash the same.

In the result, the appeal is allowed. The order of the learned Single Judge under appeal and the proceedings of respondent No.1 in

Memo No.SE/O/KDP/ADM/S1/F66/D.No.458/2004, dated 26.2.2004 are set aside.

However, it is made clear that this judgment shall not preclude the competent authority from taking action and passing appropriate order after giving action-oriented notice and opportunity of hearing. This would necessarily mean that the appellants shall be free to put forward all legitimate pleas before the competent authority for not revising their pay, fixation of seniority and consequential benefits.

As a sequel to disposal of the appeal in the manner indicated above, WAMP. No.3112 of 2005 filed by the appellants for interim relief is disposed of as infructuous and the interim order is vacated.

C.V. NAGARJUNA REDDY, J

20th June, 2007

G.S.SINGHVI, CJ

Es/Mdaa

---

[1] AIR 1967 SC 1269

[2] AIR 1970 SC 150

[3] AIR 1978 SC 597

[4] AIR 1981 SC 818 = (1981) 1 SCC 664

[5] AIR 1981 SC 136

[6] AIR 1986 SC 180